

Native Americans and Nuclear Waste Storage

At Yucca Mountain, Nevada:

Potential Impacts of Site Characterization Activities

Prepared For

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March 14, 1987

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PREFACE

This report outlines the legal requirements for consulting with American Indian groups and identifying their traditional cultural values that could be impacted during site characterization activities associated with the high level nuclear waste disposal facility project at Yucca Mountain, Nevada. More specifically the report discusses culturally relevant methods for (a) identifying persons knowledgeable about traditional cultural resources associated with properties or sites where project site characterization activities may occur and that have value to contemporary American Indian groups, and (b) implementing consultation procedures with concerned Indian peoples as required by federal policy.

Native American traditional cultural values have a special legal status in the United States because American Indian tribes are legally perceived to be conquered and dependent nations within the United States (Worcester v Georgia, 6 Pet. 515, 559; 1832). A body of law and regulation exists that defines the special status of Indian traditional cultural values with regards to development projects. This report focusses on one project and two federal policies. The project is the proposed high level nuclear waste disposal facility at Yucca Mountain, Nevada. The process of evaluating the suitability of this site and other sites in the United States is guided by the Nuclear Waste Policy Act of 1982 (P.L. 97-425, 96 STAT. 2202). The two most relevant federal policies are the American Indian Religious Freedom Act (P.L. 95-341) and the National Historic Preservation Act (36 CFR Part 800).

The report is divided into three chapters. Chapter One discusses the two federal policies most relevant to the identification of American Indian traditional cultural values and specifies which American Indian groups should be consulted during site characterization. Chapter Two provides a Native American perspective on traditional cultural values and identifies the types of values that are most likely to be of concern to Indian people and be located in the Yucca Mountain study area. Chapter Three presents a plan for identifying traditional cultural values and for consulting with the relevant Indian groups.

CHAPTER ONE: RELEVANT FEDERAL POLICIES OTHER THAN NHPA
AND INVOLVED INDIAN PEOPLES

Native American traditional cultural values are often associated with a physical property. In other words, the values are manifested in things or places that are located somewhere. In many cases these physical referents of traditional values are quite distinct, such as a rock shelter where Indian people camped, a religious petroglyph on the surface of a stone, or a site where an Indian person is buried. In other cases, the physical referents of traditional values are less distinct, such as the traditional value attached to a mountain range where creation beings lived or to a type of medicinal plant that is found throughout an ecological zone. Still other traditional cultural values are not associated with places, but instead involve issues like having the freedom to conduct religious ceremonies using traditional plants and animals and having a voice in the management of traditional cultural resources located in ethnic group Holy Lands.

When traditional cultural values are associated with a physical property, they are regulated by the National Historical Preservation Act (NHPA). The most recent and relevant -- for the consideration of American Indian traditional values -- component of NHPA comes from the Advisory Council On Historic Preservation (ACOHHP 1985) "Guidelines for Consideration of Traditional Cultural Values in Historic Preservation Review." These "Guidelines" are discussed in this chapter.

American Indian Religious Freedom Act (AIRFA 1978) (P.L. 95-341) relates both to traditional cultural values associated with a physical property and to issues of religious practice and sovereignty over ethnic Holy Lands. AIRFA is discussed in this chapter because it provides specification as to the identification of traditional values and to the process of consulting with Indian people.

RELEVANT FEDERAL POLICIES (OTHER THAN NHPA)

AIRFA

The American Indian Religious Freedom Act (see Appendix A) specifically reaffirms the First Amendment of the United States Constitution rights of American Indian people to have access to lands and natural resources essential in the conduct of their traditional religion. They have these rights even though the lands and natural resources are located beyond the boundaries of a tribal reservation.

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In Section 2 of AIRFA the President of the United States directed various federal departments and agencies to consult with native traditional religious leaders to determine appropriate changes in policies and procedures necessary to protect and preserve American Indian religious practices. A federal agency task force that was chaired by C. D. Andrus, Secretary of the Interior, issued the first department and agency response to AIRFA in 1979 (Federal Agencies Task Force 1979). Since then, each of these federal departments and agencies have moved to modify their policies and procedures to reflect AIRFA. For this report, it is sufficient to discuss only one recent and typical AIRFA response -- that of the Advisory Council On Historic Preservation.

ACOHP

In 1985, the Advisory Council On Historic Preservation (ACOHP) issued a draft of its "Guidelines for Consideration of Traditional Cultural Values in Historic Preservation Review" (see Appendix B). Since then, these guidelines have been reviewed and termed state-of-art by a number of scientists, agency personnel, and American Indian religious and political leaders (American Anthropology Association, Workshop Proceedings, 1985; Harjo 1985). It is argued in this report that the Council guidelines provide a basis for discussing which Indian people have traditional cultural values that are associated with physical properties and can be impacted by site characterization activities of the proposed Yucca Mountain nuclear waste repository facility.

There are many elements of the Advisory Council's guidelines that apply to defining which Indian peoples have traditional values that can be impacted by site characterization at the Yucca Mountain project, but the following seem to be immediately relevant to this portion of the report. The guidelines (ACOHP 1985:7) assert that:

A property need not have been in consistent use since antiquity by a cultural system in order to have traditional cultural value. The sacred mountain alluded to above, for example, might have gone out of use when the Indian group to which it is important was placed on a reservation and converted to Christianity, but have come back into use as part of a contemporary revitalization movement in the tribe; the value ascribed to it would be a traditional one.

It is argued in this report that Yucca Mountain and the area around it were traditionally used and valued by Indian peoples and that despite physical separation due to these cultural resources being incorporated into the Nellis Air Force Base Bombing and Gunnery Range and the Nevada Test Site, the Indian people continue to value these traditional cultural resources. As such, there are Indian tribes who should be consulted regarding the identification of traditional cultural resources in

the proposed Yucca Mountain nuclear waste repository study area.

INDIAN PEOPLES INVOLVED DURING SITE CHARACTERIZATION

It is maintained in this report that two American Indian peoples -- the Western Shoshone and the Southern Paiutes -- who have traditional cultural values that can be impacted during site characterization at Yucca Mountain. These two American Indian ethnic groups are involved because they traditionally occupied (i.e. pre-1850) the Yucca Mountain area. In addition, the traditional cultural values of a number of other American Indian ethnic groups are potentially impacted because they have utilized the Yucca Mountain area since 1850. All of these American Indian groups should be consulted regarding the identification of these cultural resources and the selection of procedures for further consultation.

TRADITIONAL INDIAN GROUPS (PRE-1850)

Traditional Holy Lands. The Yucca Mountain area is part of the Mohave Desert which is an important region to many American Indian ethnic groups. Without this wider perspective, American Indian concerns focussed on the Yucca Mountain area may be difficult to understand. In other words, the part is better understood with reference to the whole.

Different American Indian ethnic groups resided in the Mohave Desert for thousands of years before European occupation. During these thousands of years the American Indian ethnic groups utilized the land and its resources and built these into a cultural definition of themselves as a people. Most of the American Indian groups who traditionally lived in the Mohave Desert region perceive that they were created there and, that in so doing, the Creator also gave them a special supernatural responsibility to protect and manage the land and its resources. In western terminology, the Mohave Desert is their Holy Land (Spicer 1957).

The Southern Paiutes, for example, believe that they were created by the supernatural near Charleston Peak -- called Nuvagantu -- located in the Spring Mountains (Kroeber 1970, Laird 1976, Stoffle and Dobyns 1983). The Spring Mountains are just southeast of the proposed Yucca Mountain repository. According to Laird (1976:122)

In prehuman times times Nuvagantu was the home of Wolf and his brother, Mythic Coyote. It was the very heart of Tuwiinyaruvipu, the Storied Land.

There was and is no place in Southern Paiute traditional territory more sacred than the Spring Mountains and the areas around them. Concerns for this sacred area have been expressed repeatedly in cultural resource studies involving Southern Paiute people (cf. Stoffle and Dobyns 1983). Most recently, Nevada Paiutes expressed concerns for Pahrump Valley as a sacred area

(Stoffle, Evans, and Jensen 1987) because of its relationship to the Spring Mountains.

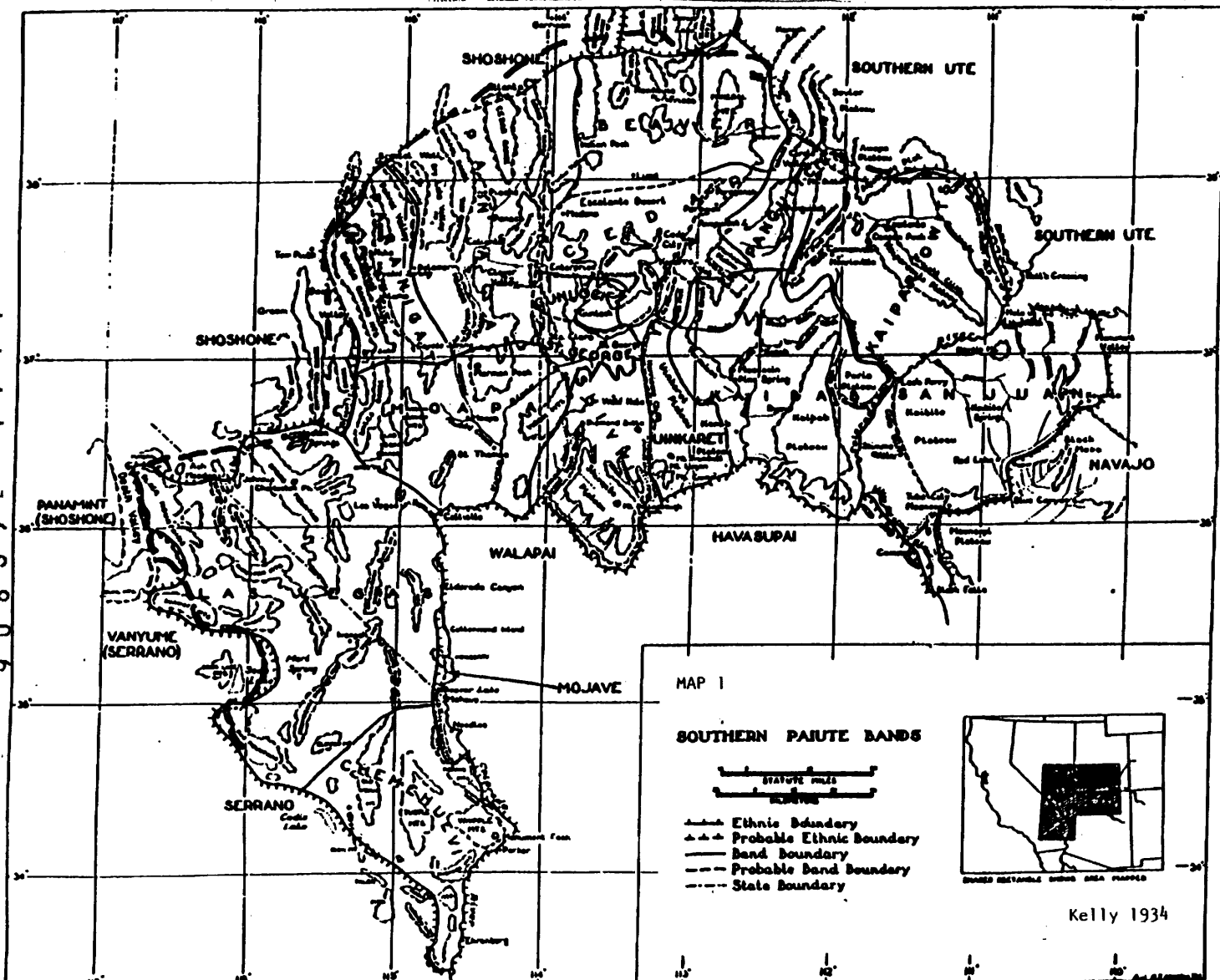
Overlapping and Shared Territory. Traditional occupation and joint use boundaries have changed over time, so that for the last thousand years, three or four American Indian ethnic groups could have occupied any specific location in the Mohave Desert, such as the Yucca Mountain area. Each of these ethnic groups could have traditional cultural values regarding any specific location.

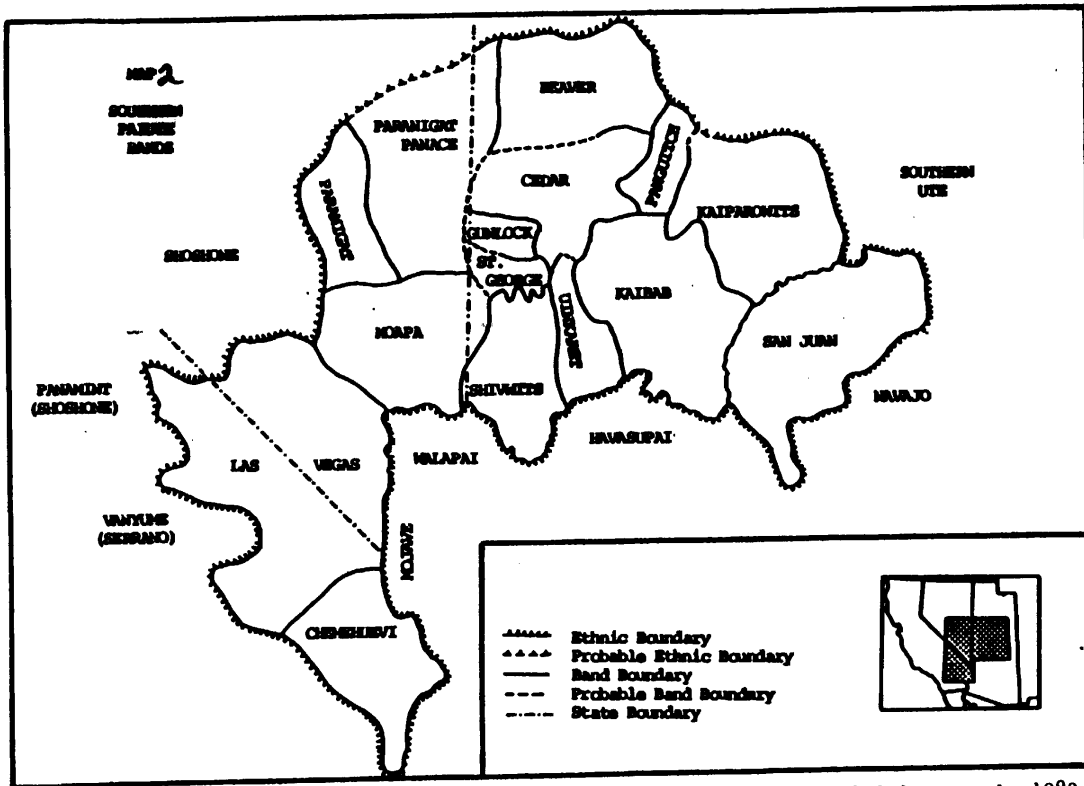
An extensive national debate over which American Indian ethnic groups resided in what lands at the time of European intrusion was conducted during the federal Land Claims Commission hearings (Kuykendall et al. 1978). During these legal hearings it was generally agreed that Yucca Mountain was located on the border between lands traditionally used by the Southern Paiutes and the Western Shoshone (see Map 1, Kelly 1934). Accepted historical, archaeological, and ethnographic documents place the two ethnic groups in the Yucca Mountain area for hundreds of years before Euroamerican intrusion (Kroeber 1970, Pippin and Zerga 1983, Steward 1938). There is little scientific argument as to which American Indian ethnic groups have a primary traditional claim to the Yucca Mountain area. Earlier traditional occupation or use claims can be argued for the Hopi Pueblos based on archaeological findings in the Yucca Mountain study area (Pippin and Zerga 1983:47) and the Mohave peoples based upon oral tradition.

Ethnic Vs. Band Affiliation. It is essential to distinguish between the concept of an "ethnic group," such as the Western Shoshone or the Southern Paiutes and a "localized band," like the Yomba or Moapa. The difference between these two types of social groups has important implications for defining which Indian groups should be consulted regarding site characterization activities at the proposed Yucca Mountain facility.

The last two hundred years of Southern Paiute ethnic group history can be used to illustrate the two concepts and to demonstrate their importance to the study. The Southern Paiutes are a people (ethnic group) who share a common culture, language, and society. They traditionally occupied and utilized territory ranging from Black Mesa, Arizona in the east to Yucca Mountain, Nevada in the west and from Sevier Lake, Utah in the north to Palo Verde Valley on the lower Colorado River in the south (see Map 1, Kelly 1934). Within this ethnic group territory there were a number of local subterritories that were the primary residence of local bands of Southern Paiutes (see Map 2, Stoffle, Jake, Bunte, and Evans 1982). The broader ethnically-based social unit -- termed here the "nation" -- functioned to move goods and services back and forth between ecological zones thus increasing the population carrying capacity of the region under Southern Paiute control (Stoffle and Evans 1976, Stoffle et al. 1982). Just as goods and services moved within Southern Paiute national territory, so did people.

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Geisler et al. 1982

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Disease and territorial encroachment combined to virtually eliminate the national functions and integration of the Southern Paiute nation by the 1840s (Stoffle and Dobyns 1982, 1983; Stoffle, Dobyns, and Evans 1982). Pippin and Zerga (1983:51) note the existence of a fireplace stone, inscribed with the date 1847, that came from a Euroamerican house located in the Nevada Test Site. After this time, local bands increased in political importance, however, the movement of people between ecological zones continued. As agricultural lands along rivers and springs were lost to Euroamericans and as natural gathering areas were destroyed by Euroamerican domestic animals, Paiute peoples began to gravitate to sources of wage employment. Paiutes worked for wages as miners, cowboys, farmers, and river boatmen. By the 1880s most Paiute people had been drawn to wage labor sources and constructed permanent homes at the edges of Euroamerican villages (cf. Crum et al. 1976:88-89, 91, 101; Bowers and Muessig 1982:22; Forbes 1967:153; Rusco 1975:128). From these residential "labor camps" Paiutes continued to return to their remaining hunting, gathering, and subsistence farming locations in order to supplement marginal and seasonal wages.

In the twentieth century, the federal government began to set aside portions of traditional territory as reservation lands for Southern Paiute people. In doing so, the federal government began to treat local labor camp populations as tribes and their their leaders as chiefs. This political fiction emphasized legitimate local leadership and control over nearby cultural resources, but ignored the traditional cultural rights and obligations of all Southern Paiutes to utilize and be responsible for natural resources in their Holy Land. In addition, the Southern Paiute traditional lands were divided between four states: California, Nevada, Utah, and Arizona. This served to further separate Southern Paiute peoples.

Despite the divisive effects of the federal political fiction of the local Southern Paiute tribe, Southern Paiute people continued to try to maintain national functions and ethnic group integration. Perhaps one of the more obvious mechanisms for this is the practice of placing children of the same couple on different tribal registration rolls. So if a man on the roll at Las Vegas Paiute Tribe marries a women on the roll at the Moapa Paiute Tribe, they may register their children at either tribe. If one of the children marries a person from the Shivwits Paiute Tribe, their children could be registered at any one of three reservations. And so Southern Paiute people continue to weave themselves back together through kinship ties in an effort to compensate for state and federal administrative units that serve as a force for ethnic group separation.

The most important implication of separating traditional ethnic group concerns from contemporary tribal concerns is that all of the tribes currently existing within the traditional ethnic territory must be consulted in order to permit a complete ethnic group response to a project occurring somewhere within

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traditional territory. If county and state boundaries are utilized to define the limits of who should be consulted, only those tribes that happen to have a reservation located within those Euroamerican political units are consulted. In order to not exclude some and sometimes most of the ethnic group members, it is important to consult with any contemporary tribe that contains living members who are identified with a traditional ethnic group territory.

RECENT AMERICAN INDIAN OCCUPANTS (POST-1850)

Euroamerican encroachment on Western Shoshone and Southern Paiute traditional territories occurred in the 1840s and by the 1850s most valuable and productive natural resources were in the hands of Euroamericans. Just as the Western Shoshone and Southern Paiute people began to gravitate towards wage labor opportunities after 1850, so did other American Indian people.

Mine camps, large ranches, commercial farms, and railroad lines served to attract Indian people of many ethnic backgrounds. Indian laborers often were recruited by Euroamerican companies and later remained in the new lands where wage work was available. Most Euroamerican mining and railroad camps had nearby another camp where Indian mine workers and their families lived. Pippin and Zerga (1983:55, 62-63) note the presence of 13 inactive mining districts that lie wholly within the Nevada Test site or Nellis Air Force Range, four railroads built in the region during the first decade of the twentieth century, and numerous farms and ranches in the area. Recent interviews with Southern Paiutes living in Nevada, suggest that there would have been Shoshone and Paiute ranch hands living with their families on most of these farms and ranches (Stoffle, Evans, Jensen 1987). That Shoshone and Paiute people continued to be knowledgeable about the Yucca Mountain study area is suggested by the fact that in 1950 Dick Shutler was guided on an early archaeology survey of the Yucca Mountain area by a Shoshone Indian from Beatty, Nevada (Pippin and Zerga 1983:26).

The Indian peoples who immigrated to the traditional lands of the Western Shoshone and Southern Paiute (such as the Yucca Mountain area) came to work for Euroamerican commercial operations, but they also began to utilize and perceive the new land and its resources as they had their own traditional territories. For example, in a recent article Drover (1985) points out that Navajo workers who came to build a railroad across the Mohave Desert remained as maintenance crews living in isolated communities along the railroad. Drover points out that these Navajo people created sweathouses, hogans, and other dwellings near the railroad that have cultural value to the Navajos as historic and religious structures. In another recent study (Stoffle, Evans, and Jensen 1987:14-15), Navajo women who were relocated to the Colorado River Indian Tribes reservation have replaced most of their weaving and medicine plants with ones available in the Mohave Desert. Also important for the emigrants, was learning where minerals for pigment and medicine

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were located. Inevitably, the people died and were buried in the new lands. In general, these data suggest that emigrant Indian people do develop culturally important attachments in traditionally consistent manners to cultural resources in new lands. The data further suggest that the longer the emigrant Indian people remain in the new lands the more cultural attachments they will make.

Traditional or Non-Traditional Values. The Advisory Council's guidelines (ACOHHP 1985:7) say that only "traditional cultural values" are a legitimate concern under the National Historic Preservation Act. A traditional cultural value is one that has historical depth, a value that has not historically been ascribed to a property is non-traditional (ACOHHP 1985:6). These guidelines raise a question of some interest to this report, which is "Should structures, plants, animals, and places that acquire cultural value while members of an ethnic group reside outside their traditional territory be defined as traditional or non-traditional values?"

It is beyond the scope of this report to answer this question for all possible cultural concerns that recent American Indian occupants may have, but this study must venture at least one interpretation in order to answer the question "Can recent American Indian occupants be potentially impacted Indian tribes or people?" The solution may hinge on whether the ACOHP guideline is specific to a physical property or to a place. If the cultural value of a property is traditional, then it may not matter that the property is located in a non-traditional place. So if Navajos traditionally valued sweathouses, then sweathouses are a traditional value even if they are built hundreds of miles outside of traditional Navajo territory. If Navajo people living in Clark County, Nevada have utilize, in a traditional manner, plants and animals from the Yucca Mountain area, then do they have traditional values that may be impacted by the repository project? These examples seems to meet the intention of the ACOHP guidelines and, if so, it would mean that any Indian tribal peoples who had left or currently have traditional cultural properties in the Yucca Mountain area are to be considered as potentially impacted by the proposed nuclear waste facility.

Individual, Local Association, or Tribal Contacts. Another issue to be raised in this report is whether these recent American Indian occupants of the area are best represented directly as individuals, through local Indian associations, or through their original tribal administrations. The decision as to which is the most appropriate contact procedure may vary by where the Indian people live. If they live in Las Vegas, then it may be best to contact them through the Las Vegas Indian Center. This organization functions, much as a tribal government, to represent the opinions and service the needs of Indian people who are not enrolled at local reservations but do reside in Clark, Nye, and Lincoln Counties. The Indian Center has its closest contact with the urban Indian population and so if the study needs to contact Indian people who live in isolated rural

villages like Carp or Caliente, then direct contact is the only proper methodology. If a group of off-reservation Indian people wish to have their concerns reviewed by the government of their original tribe, then this procedure should be considered. Without a more complete understanding of these Indian people it would be inappropriate to decide upon a single procedure for consulting with them and identifying their traditional cultural values.

LOCATION AND APPROXIMATE NUMBER OF INVOLVED INDIAN PEOPLES

The issue of how many recent American Indian occupants have left traditional cultural properties in the Yucca Mountain area cannot be determined with available data. The location and approximate number of these American Indian people as well as of those who traditionally occupied the Yucca Mountain study area can be established with some certainty.

The Western Shoshone and Southern Paiutes are the American Indian ethnic groups having the most direct affiliation with traditional cultural resources located in the Yucca Mountain area. Most of these people are enrolled at one of 13 Indian reservations. It is expected that persons enrolled at all the Southern Paiute and Western Shoshone reservations listed below will be potentially impacted by the project. It is expected that only a portion of the people enrolled at the California Paiute-Shoshone reservations will be potentially impacted, but that determination cannot be made without consulting with those tribal groups.

It will be most difficult to establish a consulting relationship with Indian people who are living away from their traditional lands. The off-reservation analytical frame is considered to consist of towns that are located within a couple of hours drive from the proposed Yucca Mountain facility site and where Indian people are known from previous ethnographic research and other documents to be living. Most of the Indian people who live off-reservation in southeastern Nevada, are not enrolled at one of the local reservations. For example, the State of Nevada Employment Security Department estimates that there were 5,640 Indian people living in Clark County in 1985, of which only 298 (5.3%) were enrolled at the Las Vegas Paiute or Moapa Paiute Indian reservations. Similarly, the Employment Security Department estimates that there were 120 Indian people living in Lincoln County and there are no reservations there. Further research is required to determine which Indian people who live in the region around the Yucca Mountain site can be contacted through one of the listed tribal units and which must be contacted through other means.

In Table 1 is a listing of the location and approximate number of potentially impacted Indian peoples. The numbers of Indian people living at any one place is a reasonable estimate based on previous field work and available published reports. The exact numbers of people enrolled with each tribe changes

because of deaths and births. Because of this, the figures in Table 1 reflect the best population information available. Different sources of information were utilized when it was perceived that a more recent source provided a more accurate population figure for some location (see Notes). While the actual population figures will vary slightly, the relative percentage of the Indian people living and/or enrolled at one location is not expected to be significantly different from that presented in Table 1.

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TABLE 1: NUMBER AND LOCATION OF INDIAN PEOPLE WITH TRADITIONAL
VALUES IMPACTED BY SITE CHARACTERIZATION ACTIVITIES

I. SOUTHERN PAIUTES TRIBAL RESERVATIONS (1)

Chemehueve Paiute Tribe, California	300
Las Vegas Paiute Tribe, Nevada	113
Moapa Paiute Tribe, Nevada	185
Paiute Indian Tribe of Utah	516
Kaibab Paiute Tribe, Arizona	200

SUB TOTAL	1,314
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II. CALIFORNIA PAIUTES-SHOSHONE TRIBAL
RESERVATIONS (2)

Lone Pine, California	115
Fort Independence, California	62
Big Pine, California	50
Bishop, California	500
Benton, California	50

SUB TOTAL	777
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III. WESTERN SHOSHONE TRIBAL RESERVATIONS (3)

Timbi-Sha, California	199
Yomba, Nevada	60
Duckwater, Nevada	106

SUB TOTAL	365
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IV. OFF-RESERVATION AMERICAN INDIAN PEOPLES (4)

Tonopah, Nevada	15
Beatty, Nevada	20
Pahrump Valley, Nevada	50
Tecopa, California	10
Carp/Elgin, Nevada	5
Caliente, Nevada	5
Las Vegas, Nevada	5,342

SUB TOTAL	5,447
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TOTAL INVOLVED INDIAN PEOPLES	7,903
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NOTES

1. Source: Since 1977, Stoffle has been in regular contact with these tribal groups and has conducted numerous surveys that have require a listing of tribal members from the tribal rolls. These figures reflect his most recent knowledge about these groups.

2. Source: These figures derive from a book by the U.S. Department of Commerce Federal and State Indian Reservations and Indian Trust Areas.

3. Source: The Timbi-Sha Shoshone figure derives from their Federal Acknowledgement documents and none of these Indian people are members of any other Indian tribe (see Appendix C). Only about 50 of these Indian people live at Furnace Creek, California but as soon as this new tribe receives full government services and land, many of the tribal members are expected to return to the Death Valley area. The last two figures derive from the U.S. Census for 1980 and were checked with a member of one of these two tribal governments.

4. Source: The first 6 population figures derive from the personal knowledge of Stoffle and Richard Arnold, Director of the Las Vegas Indian Center. Through meetings and phone conversations these figures have been established based on the combined personal knowledge of these two people. The figures are quite accurate. In contrast, an unknown (but perhaps significant) number of Indian people reside on farms and ranches in Nye and Lincoln Counties. The Las Vegas population is an estimate that is based on the State of Nevada Employment Security Department report for 1985. The figure was derived by taking the 5,640 Clark County Indian population estimate and subtracting the 113 people enrolled at the Las Vegas Paiute Reservation and the 185 people enrolled at the Moapa Paiute Reservation. These figures were checked by Richard Arnold, Director of the Las Vegas Indian Center. As director of the Las Vegas Indian Center, Mr. Arnold works on a daily basis with Indian people who are not enrolled at a southeastern Nevada reservation and either live in the city of Las Vegas or in the rural areas of Clark, Lincoln, and Nye Counties.

CHAPTER TWO: IDENTIFICATION OF AMERICAN INDIAN CULTURAL ISSUES REQUIRING ASSESSMENT DURING SITE CHARACTERIZATION

This chapter discusses the American Indian traditional cultural values that are associated with physical properties in the Yucca Mountain study area and that can be potentially impacted by site characterization activities. It also discusses the broad cultural perspective that often is brought with Indian people when they are asked to participate in the assessment of their traditional cultural values. A key component of this perspective is the concept "cultural triage."

The following assessment of potentially impacted cultural resources is based on data available to the author from previous research projects (Bean and Vane 1978, 1979; Stoffle and Dobyns 1982, 1983; Stoffle, Dobyns, and Evans 1983). These projects have been conducted in the southeastern Nevada region but none were within the Yucca Mountain study area itself. Indian traditional cultural values that are associated with physical properties are termed "cultural resources." As such, they are those values most pertinent to the National Historical Preservation Act. These categories of cultural resources identified in this chapter and the following discussion of an Indian cultural resource perspective have been "grounded" in the ethnographic and ethnohistorical literature. No list of cultural resources is complete, however, without actually interviewing the Indian people themselves and providing the opportunity for them to visit the study area.

"CULTURAL TRIAGE"

AN AMERICAN INDIAN PERSPECTIVE ON CULTURAL RESOURCES

CULTURAL RESOURCES AND DEVELOPMENT

Previous ethnographic research among Southern Paiutes, Western Shoshone, and other Indian people of the region, indicate that they perceive cultural resources to be elements of a single whole. This epistemological premise is often expressed through the concept of the integration of man, nature, and supernatural. One implication of this premise, is that Indian people perceive themselves to be a functional and essential part of the natural elements in their traditionally occupied lands. They perceive this relationship to have been caused by the supernatural. The persistence of this relationship through their proper stewardship of these natural resources is perceived to be critical in the persistence of themselves as a people. This conception is so deeply rooted in the perception of Indian people, that in the dozen American Indian cultural resource assessment studies conducted by the author the issue has always emerged before any

discussion of specific cultural resources has proceeded. Thus, it is appropriate to begin this section on cultural resources with a discussion of this premise and its implications for a consultation and identification methodology.

Developments in the Mohave Desert usually modify the visual landscape and destroy plants and animals through ground-breaking activities. These projects often increase access to remote areas by cutting new roads in the desert. Access roads increase off-road-vehicle use, rock hounding, plant gathering, animal hunting, and pot-hunting for Indian artifacts. Faced with these well documented realities, Indian people are usually not supportive of development projects on their traditional lands. When asked to participate in choosing between possible locations for development sites, however, Indian people have identified sites that have more or less potentially impacted cultural resources.

If Indian people initially take a preservationist position regarding traditional cultural resources and development projects, then how is this position consistent with their willingness to prioritize these cultural resources? The author has been grappling with this problem for years. Earlier (Stoffle, Jake, Evans, Bunte 1981:6) the issue was summarized as follows

A Native American can say, without the statements being contradictory, that all of the land is sacred and that a specific area is clear of sacred resources and will not be harmed by construction. In the first case the response is to the general idea of having the development occur at all, while the latter is a conditional response which means that given the project goes ahead a particular area has the fewest cultural resources.

This explanation has seemed only partially satisfactory to the author, even though it has been utilized repeatedly in previous studies to explain this apparent conflict.

Recently the author spent five months working with six tribes regarding a proposed low-level radioactive waste disposal site in the Mohave Desert. Again dozens of elders initially expressed the perspective that no harm should come to their traditional cultural resources. Later, during on-site visits, many of the same elders noted that some resources were less readily available and that some traditional areas were more important than others and these cultural resources should be categorized as having higher concern. When asked about the apparent conflict in positions, one elder noted "Well the project is going to take something anyway, so we have to choose." Similar statements have been given to the author before, but this time a Euroamerican concept has been selected that seems to convey the emotional cost inherent in choosing between cultural resources, all of whom are equally valuable in traditional terms.

The concept is "triage."

MEDICAL TRIAGE

"Triage" is a Euroamerican medical term that refers to "screening of patients to determine their priority for treatment" (Stedman 1972:1322). Triage is the process of rationing life-saving medical resources among patients who have varying levels of need (Winslow 1982). Patients are ranked according to criteria that reflect an agreed upon value position, such as "the greatest good for the greatest number." A forced choice can derive from war creating more wounded than a medical facility can assist at one time or by a new medical advancement that is more limited in supply than the demand for it, such as the artificial heart. The crux of medical triage is that professionals must develop a corollary rule that partially violates the general principle from which it derives. So while medical professionals accept the principle that life is to be saved at any cost, situational constraints may force them to select some patients to increase their chances to be saved, while others have a reduced chance to live.

CULTURAL TRIAGE

"Cultural triage" should be defined as a forced choice situation in which an ethnic group is faced with the decision to rank in importance cultural resources that could be impacted by a proposed development project. Through this ranking the probability of certain cultural resources being protected is increased. On the other hand, it is understood that by selecting some cultural resources for special status, it relegates others to less-than-special status. Those defined as less-than-special, then, are placed at greater risk from the proposed project.

Medical professionals who do triage accept the principle that all human life is valuable and, similarly, Indian cultural experts (at least those who would be involved in the Yucca Mountain project) who do triage accept the principle that all traditional cultural resources are of equal importance. Triage occurs when a resource-threatening situation precipitates a forced choice between resources based on some criteria. Medical criteria focus on a combination of factors, such as available medical resources, length of time before critical medical actions must occur with a patient, and an assessment of whether or not the person can be helped. Tribal elders similarly assess the nature and availability of cultural resources, the time available to make a decision, and whether or not certain resources can be better protected by their triage decision.

THE RISKS OF CULTURAL TRIAGE

Unlike medical triage, Indian people must consider whether or not attempting to save a cultural resource may further threaten it. For example, identification of burials, can lead to pot hunting by Euroamericans. In a Kaiparowits coal development

study (Stoffle, Jake, Bunte, and Evans 1982:124) a Kaibab Paiute elder indicated he wanted to protect traditional trails, but that he would not reveal the location of those trails because once known they could be followed to hitherto undiscovered traditional Indian camps. Indian people often say that revealing Indian plant usages causes the plants to be taken by Euroamerican, who not only reduce the limited supply of the plants but, also, profit from what should only be an Indian resource.

TRIAGE MITIGATION

Like medical triage, cultural triage does not guarantee that the lower ranked resources will be destroyed. Once the higher priority resources are protected, then efforts are directed towards doing whatever is possible for the remaining resources. This process is called "mitigating cultural resources." In some cases, cultural resources can be moved to a safer zone such as transplanting medicinal or food plants or relocating artifacts to a museum. In most instances, however, the physical context of the cultural resources is broken. For ethnic groups like Southern Paiutes, who believe that all things, including rocks and plants, have a life force and a reason for being where they are, mitigation through removal is a lesser of two unwanted actions. Only total destruction is less acceptable.

Like the medical professionals who are forced by circumstance to choose between patients (Winslow 1982; Zawacki 1985), tribal elders who are given a forced choice regarding the disposition of cultural resources experience ethical conflict, emotional stress, and even fear of reprisal. Elders express concern over whether being involved in triage will violate a traditional norm against sharing traditional knowledge with outsiders. Concern is expressed over how other tribal members and even future generations of tribal members will evaluate the decision to participate in triage. The concern over whether more harm than good will derive from a triage decision can cause a tribal elder and, in one instance, even a whole tribe (Stoffle, Dobyns, Evans, Steward 1984) to be unable to respond to a cultural triage choice.

METHODOLOGY AND TRIAGE

Because cultural triage involves some risk to the cultural resource itself as well as to the tribal elder who agrees to participate in triage, the consultation and identification methodology must contain certain steps in order to permit Indian people to make a full unrestricted response to a proposed project.

First. The Indian people must believe that their participation in consultation and identification of cultural resources is more likely to protect these cultural resources, than would saying nothing at all. The credibility of the consultation process will hinge on (1) the reputation of project personnel, (2) the

reputation of the agency sponsoring the study with regards to past projects involving Indian cultural resources, and (3) written documents such as Programic Memorandum of Agreements that define their rights to be consulted and to identify cultural resources.

Second. The Indian people must have the opportunity to discuss among themselves whether or not to participate, before they are asked to proceed with the identification and triage of cultural resources. This can be accomplished by conducting the research in phases separated by periods during which tribal discussions can occur.

Third. Indian people must fully understand how the project could impact cultural resources. This may be accomplished by having a tribal representative view first hand the project site. Videotape or still photography may assist this process.

These consultation and identification methodology steps are discussed more fully in the next chapter of this report.

GENERAL CATEGORIES OF AMERICAN INDIAN CULTURAL RESOURCES

The general categories of American Indian cultural resources that are potentially impacted by site characterization activities in the Yucca Mountain nuclear waste project study area are well known. Past research involving these Indian ethnic groups documents a consistent response to certain categories of cultural resources. The following discussion of these categories draws upon previously published materials on this issue (cf. Stoffle, Jake, Bunte, Evans 1981) as well as other materials available from Yucca Mountain archaeology reports.

CONCERNS FOR PLACE

Native American people express concern that specific places of sacred cultural value to them be preserved. What "preserved" means is very much subject to cultural definition and to perceptions as to what is possible. When such areas are within the control of the Native American group, the region is sometimes formally defined as a cultural park and sometimes informally defined as an area to be respected. The Navajo Nation, for example, defined large portions of their reservation lands as a series of cultural parks (Cortner 1976). The Kaibab Paiutes have an educational hiking trail for tourists located on the reservation along which certain areas have been demarcated by stone walls and marked by signs as sacred (Stoffle and Bunte 1979).

Traditional Use Areas. Sacred places become important to a cultural group through a variety of ways. Among the Chemehuevi Paiutes, for example, descriptive place names were functionally useful to guide travelers long distances through desert country

as well as being incorporated into the religion (Laird 1976:119). Among this Southern Paiute group, territory was defined by hereditary songs which delineated a hereditary hunting ground of closely related groups and, thus, made it part of that sacred tetralogy of man, song, mountain, and game animal (Laird 1976:119).

Historic Use Areas. As Indian people live in a certain area, they develop localized values relevant to physical properties and places there. So, for example, in Pahrump Valley there are springs where Paiute Indian people lived until late in the twentieth century (Stoffle, Evans, Jensen 1987). These sites usually contain homes, gardens, places where religious ceremonies occurred, and burials. Associated with these primary living areas, are native plant gathering and hunting areas. Paiute people who were raised at these places have strong cultural ties to them.

Those ties that derive from the long-term use of an area should be termed "historic ties." These ties are distinguished from traditional ties in that the former are often less site-specific and more generally shared by the ethnic group.

Creation and Legend Areas. For most of these potentially impacted Indian people, places are sacred because the supernatural created the people there and made them stewards of the natural resources. This defined the boundary of their Holy Land. The issue has been discussed in the first chapter of this report and need not be repeated here. Within the Holy Land, also, are areas that are sacred because they are where important creation-time beings lived, died, or conducted some activity that was key to the ethnic group. Most of these places are recorded in legend.

CONCERNS FOR PLANTS

The most extensive corpus of concerns expressed during past cultural resource assessment projects has been focussed on plants. Native Americans relied upon plants for their survival, and so ethnobotanical knowledge was an essential element in their "transhumant adaptive strategy" (Stoffle and Evans 1976) to these ecologically complex lands. An intimate knowledge of plant genetics has been suggested as a major "cultural focus" of desert-dwelling Indian people (Anderson 1956; Shipek 1970). Between 1935 and 1937 hundreds of native plants, many from the Beatty area, were collected and their uses identified by Nevada Paiutes and Shoshone peoples (Train, Hendrichs, and Archer 1957). In other words, these studies suggest that plant knowledge and use patterns were and are the highlight of desert-dwelling Indian peoples' traditional cultural development.

These potentially impacted Indian ethnic groups continue to use a wide variety of plants for food, medicine, ceremonies, and income. Southern Paiute people, for example, have a world renowned basketmaker who is in constant demand to produce museum

quality baskets in the traditional styles. Her baskets may bring from \$2,000 to \$5,000 each. The materials for basket production are scarce and are constantly being reduced by development projects in the Mohave Desert. In addition to being a source of personal income for herself, her baskets are a direct cultural link with the traditional past and a source of ethnic pride.

Archaeology site reports on the Yucca Mountain area suggest it to be richly endowed with diverse communities of native plants (Pippin and Zerga 1983; Pippin, Clerico and Reno 1982; Pippin 1984). Indian rice grass, Chenopodiaceae, and desert thorn berries are expected to be plants of central concern (Pippin 1984:222). Ethnobotanical walk overs with Indian people who know about native plants are expected to yield a wealth of information about the plants and their association with archaeological features found in the area.

CONCERN FOR ANIMALS

Indian people have expressed strong concerns for animals. These concerns parallel those of plants in that they are extensive and apply to all species big and small, common and rare. When forced to triage animals, however, Indian people realize that few animals will be provided special protection unless they are already defined by the Euroamerican society as "rare" or "endangered." There are, however, points of juxtaposition of Euroamerican concerns and Indian concerns in the desert tortoise and the mountain sheep. Both of these animals figured prominently in the legends of Indian people and in their basic diet. Thus assigning high sensitivity ranking to these two animals is a relatively clear triage decision for Indian people. Both of these animals are found in the Yucca Mountain study area.

CONCERN FOR NATURAL ELEMENTS

Indian people with traditional cultural resources in the Yucca Mountain study area, used all the resources in their environment such as water, minerals, stone outcrops of various types, crystals, and even mud deposits. Water was central because to it were attracted plants, animals, and people. Water was needed for cultivating crops and husbanding semi-cultigens.

Water Systems. Surface and subsurface water systems were a traditional "cultural focus" around which an extensive knowledge base was developed. The responses of Indian people to projects today still reflect this knowledge and intensity of concern about water systems. Archaeological surveys of the Yucca Mountain study area show that water sources were important to Indian people because artifactual materials are more concentrated near water sources and catchment basins (Pippin 1984:1)

Minerals. Minerals were utilized in personal decoration, curing, and religious practices. For example, there is intense concern expressed for white quartzite. It has a variety of

religious uses -- many of which remain unrevealed to outsiders according to a recent study (Stoffle, Evans, Jensen 1987). Quartzite crystals are of special importance.

Stone Outcrops. Stone outcrops provide access to a variety of materials, many of which were utilized traditionally. One example, is the fine grained sandstone used to make the metate and mano, essential for grinding seeds and other materials. Volcanic activity produced a variety of rocks such as rhyolite "which provided Indian people with a toolstone resource from which they could shape their lithic artifacts (Pippin and Zerga 1983:7).

Mud Deposits. Mud deposits have been documented to contain dye for hair, absorbing materials for curing surface skin problems, and clay for pottery. Some of these deposits are rare and knowledge of their locations are carefully guarded. One tribal elder is recognized as a curer of skin problems and is able to sell his mud treatments for up to \$20 for a 2 ounce portion of mud. As with basketry, knowledge of traditional curing materials can be a source of income for Indian people, but also it is a tie to the past and a source of pride for present and future generations of Indian people.

CONCERNS FOR BURIALS

Probably no issue has received more attention in recent years than the desire of Indian people to have a voice in the disposition of their ancestor's graves. These concerns include the bones of the person, the grave goods, and the grave site. The exact nature of these concerns vary from ethnic group to ethnic group, mostly depending on their perception of the supernatural and burial practices. In all cases the concerns are strongly held and have been strongly expressed in past studies.

It goes without saying that the Indian people are concerned about this issue, but, perhaps, a brief ethnographic note is in order. Southern Paiute people, for example, not only bury their dead but traditionally burned or buried grave goods with the body. They then engage in up to three days of singing in a ceremony that anthropologists have called "the cry," because of the great outpouring of grief and joy that is expressed during the ceremony. People cry out their feelings for each other and for the dead. The dead person is reassured that his relatives and friends love him, but that it is time for him to go to the afterworld. The three days of songs bring the dead person along a trail which is physically represented along known terrain. At the end of the ceremony the dead person has gone to the afterworld, but he was only able to do this with the help of many concerned tribal members. If a dead person does not feel right about being in the afterworld he may come back to his friends and relatives and take one of them with him for company and assurance.

Disturbance of a Southern Paiute grave potentially undoes

all that the dead person's friends and relatives have done for him during the cry. It is possible for the dead person to come back from the afterworld. This poses a problem for the living relatives and friends. Most of the factors associated with this problem are not known to Euroamericans. Time since burial occurred, the nature of the death, the age of the dead person, and other factors are important in the response of the Indian people to a disturbed grave. It is a serious issue that can cause the outlay of additional financial resources, tax the emotional reserves of tribal members, and can even cause the death of living people.

Shoshone and Southern Paiute people traditionally buried their dead near to their more permanent camping areas. Pippin's (1984:233) archaeological excavations document that the aboriginal Indian people collected, processed, and ate their resources while they were at Yucca Mountain. In addition to being an area of settled occupancy, Yucca Mountain has the geological features that are ideal for burials. These features are low cliffs with small crevases in which the body can be placed and covered by stone. Burials occurring during the historic period when these Indian people lived at ranches or mine camps were made near these camps. These data suggest that burials are likely to be present in the Yucca Mountain study area.

CONCERN FOR ARTIFACTS

The artifactual materials left by Indian people in traditional camping, gathering, and hunting areas are culturally important to them. Artifacts associated with a dead person's burial are especially sensitive for reasons just discussed. Indian people prefer that artifacts be left in place. If the artifacts must be removed, then it has been the wish of many Indian people that the curation of the artifacts be discussed with the appropriate ethnic group.

DIFFERENTIAL EVALUATION OF CULTURAL RESOURCES BY INDIAN PEOPLE

American Indian cultural resources are expected to be differentially evaluated by Indian peoples. The issue of what factors contribute to a pattern of differential evaluation has been discussed under the issue of cultural triage. The factors that influence the willingness to engage in cultural triage -- perception of ability to protect resources, study credibility, opportunity to discuss project with others before a decision is made, and understanding of project-resource relationship -- all contribute to differential responses in cultural triage. In addition, Indian people will differentially evaluate resources depending upon how well they know an area and whether they or their immediate relatives lived in the area. For example, historic ties to a locale will be more important to members of an Indian ethnic group who lived in the locale than to other ethnic group members who lived elsewhere.

In general, people from different ethnic groups will have different evaluations, as will men and women from the same ethnic group. Men and women from the same ethnic group, for example, when asked to provide the criteria for cultural triage are likely to emphasize those cultural resources that they know best and use most often. Consistently, Indian men who have gone for an on-site walk-over select for special protection animals, minerals, and even plants used in activities dominated by men. Indian women involved in a similar walk-over will focus on certain food plants, dyes used in basketmaking, and animals used for clothing. These responses do not seem to represent less concern for certain cultural resources, but rather seem to be a function of cultural-role-specific knowledge and even a perception of who should be responsible for what resources.

It is important to design the cultural resource identification and consultation methodology so that different categories of persons are appropriately represented. A methodology that emphasizes women over men, young over old, on-reservation over off-reservation tribal members, would bias the results toward certain cultural resources. The next chapter discusses a procedure for identifying traditional cultural values that have a physical referent and consulting with Indian people about the criteria for triaging these resources.

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CHAPTER THREE: A METHODOLOGY FOR CONSULTATION AND CULTURAL RESOURCE IDENTIFICATION

This third chapter addresses the issue of how to consult with Indian groups and identify those traditional cultural values that may be impacted by site characterization activities at the Yucca Mountain high level nuclear waste facility. This consultation and identification methodology rests upon assumptions that have been defined in the two previous chapters. Most important among these assumptions are (1) that it is recognized that Indian people have traditional cultural values that are associated with physical properties located in the Yucca Mountain study area, (2) that Indian ethnic groups with traditional as well as ones with recently developed ties to the Yucca Mountain area are potentially impacted, and (3) that identifying and ranking cultural resources -- a process described as cultural triage -- requires a special methodology in order to permit a full ethnic response.

The following consultation and identification methodology is divided into tasks. Many of these tasks are sequential, others can occur simultaneously. The tasks and sequences represent a decade of research experience with Indian cultural resource studies. Over this period a certain amount of experimentation with the methodology has occurred. New tasks and sequences have been tried, those aspects of the methodology that have been found to be more effective have been retained. In all cases, however, adjustments to the methodology must occur because each development project has unique characteristics.

TASK-BY-TASK DISCUSSION

The following is a list of the major tasks in the recommended research methodology. Some tasks are primarily for consultation while others are primarily for the identification of traditional cultural values. The primary function of each task is indicated when the task is discussed.

1. Contact Official Indian Representatives
2. Appoint Official Tribal Contact Representative
3. Conduct Key Cultural Expert Interviews
4. Search Specialized Literature
5. Analyze Data
6. Visit On-site With Elders And OTCRs
7. Integrate And Evaluate Findings
8. Draft Report
9. Review And Resolutions By Tribes
10. Finalize Report

CONTACT OFFICIAL INDIAN REPRESENTATIVES (CONSULTATION)

Tribal Contacts. Most American Indian people belong to a federally recognized Indian Tribe. This official body is usually governed by a Council which is often headed by a Chairperson. Tribal Councils are the first point of contact for consultation. The Council should be made aware of the project by mail. The tribal Council should be asked whether or not they wish to participate in the study at this time. Phone interactions are usually required to provide further information on the project. If the Council so desires, these letter and phone interactions should be followed by a face-to-face presentation on the reservation. Often a Council will ask for two presentations, one for them to discuss technical aspects of the projects and a second to inform tribal members at large.

Non-ward Indian and Off-reservation Contacts. Some Indian people do not belong to an Indian tribe. They may have what the Bureau of Indian Affairs (BIA) terms a "non-ward" status. The Timbi-Sha Shoshone people of Death Valley, for example, have only recently been acknowledged as an official Indian tribe even though as non-ward Indians they were recognized by the BIA as an Indian group, received BIA benefits, and were provided with 40 acres for a village by the Park Service (Federal Register Vol. 47, No. 214, November 4, 1982). The Timbi-Sha people have both traditional and historic ties to the Yucca Mountain study area.

The 50 Pahrump Paiutes (see Table 1) have a "non-ward" Indian status. Like their neighbors the Timbi-Sha, Pahrump Paiutes have lived in their traditional lands receiving some federal benefits, but not being acknowledged by the BIA as a tribe. The Pahrump Indian group is currently seeking official acknowledgement from the BIA. There are living people among the Pahrump Paiutes who lived in the Yucca Mountain study area as children, so they, like the Timbi-Sha, have traditional as well as historic ties to the Yucca Mountain study area.

Other Indian people are living away from their ethnic reservations. These Indian people have cultural resource concerns because they used, in a traditional way, the natural elements present in the traditional lands of other Indian people.

There is more than one procedure to establish official contact and begin consultation with the non-ward and off-reservation Indian people. If they currently have their own group administration, as do the Pahrump Paiutes, then they should be treated as though they were a federally recognized tribe. If they have an organized membership group that currently provides services and represent their interests, like the Las Vegas Indian Center, then this organization could serve as the point of official contact. Other unorganized non-ward and off-reservation Indian peoples should be treated as a "collectivity" (Merton 1967), i.e. people with a common interest but having no common membership group. As such, their individual cultural concerns can be registered by interview and survey, but their concerns

become expressed as statistical summaries rather than by tribal resolution.

OFFICIAL TRIBAL CONTACT REPRESENTATIVE (CONSULTATION)

Tribal Councils have full administrative schedules. They cannot follow in detail every cultural resource proposal that potentially impacts tribal members. Nonetheless, they are responsible for making a final judgment on what the tribe recommends regarding the disposition of traditional cultural resources. An Official Tribal Contact Representative (OTCR) is a position that has been developed and functionally refined over a number of project. The primary function of the OTCR is to serve as an information link between the project and the tribal council. The OTCR is provided a specialized one or two day long orientation that often includes a site visit. The OTCR is provided regular updates regarding consultation and identification of cultural resources, as well as, notification of changes in the original work schedule.

The OTCR may help arrange for the on-reservation meetings and interviews with key cultural experts. The meeting with the tribal members at-large is usually announced in the tribal newsletter a month or two weeks before the meeting date. The OTCR will work under the direction of the Council to set up the first set of interviews with Indian people who are recognized as being knowledgeable about the cultural resources in the study area. The OTCR is responsible for acquiring needed demographic information about the tribe, especially important is helping to acquire a mailing list of adult tribal members which will be needed if a random sample must be drawn for additional interviews. When on-site interviews occur with elders, the OTCR arranges for their travel and expenses and accompanies them into the field. The OTCR often serves as a translator when elders wish to talk about the project in their own language. When the tribal concerns are drafted, the OTCR reads an early draft of the report in order to recommend additions and correct errors. When the draft report is issued, the OTCR summarizes the findings for the Tribal Council who then pass a formal tribal resolution. The resolution makes the comments official.

In general, the OTCR becomes the tribal member who best understands the project, its schedule, and its findings. Because of this knowledge base and being officially in charge of processing information about the project, the OTCR is able to correct misinformation about the project and to assure the Council that they can keep up with the project. The OTCR is often a young tribal member already working in tribal government. In past projects, the typical OTCR had a college education and was able to digest the great volume of technical information usually associated with the project. Because the OTCR must take time away from other duties, she(he) is paid by the project for the time spent working on the project.

KEY CULTURAL EXPERTS (IDENTIFICATION)

Key cultural experts are persons the tribal council recognizes as being especially knowledgeable about the cultural resources in the study area. They are the people who identify the types of traditional cultural values that may be impacted by the project. Interviews with these experts occur after the Council has given permission to proceed with the study and the OTCR has been given a project orientation. Interviews can occur the next day after the face-to-face meeting with the Council and/or the meeting with tribal members at-large.

Although key cultural experts may know where specific cultural resources are located in the study area, they tend to only make general statements about the ethnic group's ties to the region, the general types of cultural resources that may be found in the study area, and the types of impacts that could result from the project. In previous studies, these cultural experts have never revealed, during the initial interview, all that they know about the site and its cultural resources. The reasons for this behavior have been discussed more fully in Chapter Two. Briefly summarized, before these key cultural experts can provide site-specific information, they need time to (1) learn about the project, (2) exactly identify the study area, and (3) talk with other knowledgeable people about what should be revealed to the project's study team.

Initial interviews with key cultural experts are facilitated if they can visit the site. This on-site visit can be combined with the on-site visit by the OTCRs which occurs during their orientation. Sometimes it is impossible for key cultural experts to make an on-site visit. This may occur because of ill health or because of other commitments. Without the on-site visit, interviews can occur in the homes of key cultural expert. Home-based interviews can be improved if the study area is marked on a raised topographic map and is accompanied by photographs of the site. Key cultural experts are not paid if they are interviewed in their homes, but if they are asked to visit the study area they are paid for their time away from their jobs.

Indian tribes usually recognize their elders as being most knowledgeable about cultural resources. As a result of this, most of these key cultural expert interviews are with elderly tribal members. These people often have difficulty understanding the project and, even, why they are being consulted about resources that have been taken from traditional tribal control. The elders may have difficulty with the English language, and written materials tend not to facilitate communication. For these reasons, the OTCR is usually present to assure the elder that the research is approved by the Council and to translate when necessary.

SPECIALIZED LITERATURE SEARCH (IDENTIFICATION)

The term "literature" is used here to refer to any published or archival materials that help identify potentially impacted cultural resources or "triangulate" -- establish as fact from three or more sources of information -- information provided by Indian people about those resources. In order to know about the early culture and land use patterns of Indian people in the Yucca Mountain study area there are early traveler accounts, local newspapers, and ethnographic studies. Other insights will derive from searching U.S. Census, BIA records, and local public documents, like land sales records.

One purpose for the specialized literature search is to establish which Indian ethnic group traditionally occupied the study area. Chapter One of this report addressed this issue. There may be, however, a need to further document which Indian ethnic groups were present in the study area after 1850. Another purpose of the literature search is to help define which cultural resources are potentially impacted and where they might be located. Chapter Two addressed this issue by identifying, from previous studies, the categories of cultural resources that are expected to be present in the study area. A further literature search, especially focussed on local archival materials and newspapers, would help locate resources and identify the people associated with them. A final purpose for the literature search is to "triangulate" information provided by Indian people. Often people know about cultural resources second hand, but may not know where they are located. Documents -- perhaps BIA records, personal diaries from local farmers, or minning records -- can help establish with greater certainty the location of these resources.

Ideally the option to conduct a literature search should be available to the study team for the duration of the project. Even during the report write-up period, questions can be raised that may be answered by referring to some literature. The literature search task should be on-going with three main periods of work expected: (1) while the tribal governments are being contacted, (2) just after the key expert interviews, and (3) during report drafting.

ANALYSIS OF DATA (IDENTIFICATION)

The key cultural expert data will be qualitative and should be analyzed through standard ethnographic techniques. Interviews will be recorded as completely as possible, this means with tape recorder if approved by the interviewee. Tape transcripts will then be compared in order to identify patterns in the responses. When the data appear conflicting, reinterviews should occur in order to check if the conflicts are real or just apparent. Triangulation with documents should occur whenever possible in order to assure completeness and accuracy.

A descriptive analysis of total responses will be followed

by ethnic group summaries, which will be further subdivided by tribal responses. At present, there are no working hypotheses to be tested. If such hypotheses should emerge during the key cultural expert interviews, then the interview questions would be adjusted accordingly in order to test the hypotheses.

ON-SITE VISITATION (IDENTIFICATION)

The identification of cultural resources culminates in an on-site visitation with selected cultural experts. The initial key cultural expert interviews and specialized literature search identified the types of cultural resources that are located in the study area. These data provide a basis for cultural resource triage. Taking these data together, permits the most important cultural resources present in the study area to be identified. What remains is to specify the exact location of these cultural resources.

Each ethnic group will select at least one representative to make the on-site visit. This representative will be an expert in the type of cultural resources that have been identified by the ethnic group as most important. The representative will identify the location of known cultural resources and these will be officially recorded.

The on-site visit, also, permits the elder a last opportunity to observe cultural resources whose existence in the study area is not in the living memory of the ethnic group. Such resources can be recognized when viewed first-hand by a cultural expert. The presence of these cultural resources will also be officially recorded.

INTEGRATION AND EVALUATION OF FINDINGS (IDENTIFICATION - CONSULTATION)

Study team members will integrate findings to produce a complete description of the cultural resources. This list will be shown to the OTCRs and the key cultural experts. They will be asked to triage the cultural resources and to suggest procedures for further consultation.

DRAFT REPORT (CONSULTATION)

The report will be drafted. Portions of the report containing the concerns of specific official Indian organizations or tribes will be sent to their OTCR for review. Corrections will be made and incorporated into a draft report.

DRAFT REPORT REVIEW (CONSULTATION)

The draft report will be submitted for comment to appropriate officials. Each tribal group will pass a resolution regarding their cultural concerns, thus making this portion of the report official.

FINALIZATION OF REPORT

Recommended changes will be made to the draft report. Comments and tribal resolutions will be appended to the draft report. The draft report, with changes, will be submitted to Science Applications International Corporation and the DOE for final approval.

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APPENDIX A:

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• APPENDIX B:

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GUIDELINES FOR CONSIDERATION
OF
TRADITIONAL CULTURAL VALUES
IN HISTORIC PRESERVATION REVIEW

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Background to the Guidelines

Under Sections 106 and 211 of the National Historic Preservation Act, the Advisory Council on Historic Preservation has established a review process, commonly called "the Section 106 process," to ensure that historic properties are effectively considered in planning by Federal agencies. Over the years since 1968, when the process was put into place, the Council has reviewed an increasing number of projects in which cultural value was ascribed to the historic properties involved. Examples include the Gasquet-Orleans Road, a Forest Service undertaking in California affecting an area in which American Indian religious practitioners receive spiritual power, Murrell's Inlet in South Carolina, where a proposed marina development would damage the traditional lifeways of a small coastal community, and the deployment of the Peacekeeper Missile in Wyoming, which would affect unidentified Lakota Indian burial places. Review of these cases has often been complicated and fraught with difficulty, sometimes resulting in delays and litigation. It has become apparent that many of the problems surrounding these and other projects have resulted from failure to recognize traditional cultural values in project planning, and from lack of effective mechanisms for identifying and resolving conflicts between differing cultural value systems. The Council's experience in consultation on such projects has suggested that a concrete guidance document setting forth Council policy and recommended procedures would be in order.

Congress, meanwhile, has indicated its concern about the consideration of traditional cultural values. In 1978 Congress enacted the American Indian Religious Freedom Act (42 U.S.C. § 1996), which established as United States policy the protection and preservation of traditional American Indian religions, and directed Federal agencies, in consultation with American Indian groups and traditional leaders, to evaluate their policies and procedures to ensure that this policy was carried out. Two years later, Congress included Section 502 in the National Historic Preservation Act Amendments of 1980, directing the Secretary of the Interior and the American Folklife Center in the Library of Congress to:

"...submit a report to the President and the Congress on preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways....(including) recommendations for legislative and administrative actions by the Federal Government in order to preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage" (16 U.S.C. 470a note).

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The resulting report, entitled Cultural Conservation and published in 1983, recommended that the Federal Government:

"Clarify national policy in statutes including the National Historic Preservation act of 1966, the National Environmental Policy Act of 1969, and the American Folklife Preservation Act of 1976 by means of Executive Order, Joint Resolution, amended legal definition, new legislative provisions, or comparable measures to indicate the full range of cultural resources included under the protection of law by defining cultural and historic resources to include historic properties, folklife, and related traditional lifeways; such action will strengthen and give coherence to policies related to cultural conservation and result in modification of appropriate agency guidelines..." (AFC/DOI 1983:74).

Cultural Conservation went on to recommend that the Government:

"(i)include in the work of the Advisory Council on Historic Preservation such efforts as ... clarifying its role as a mediating authority in the resolution of conflicts related to cultural conservation; increasing attention to its role in advising other elements of government on matters of preservation policy and agency undertakings related to cultural conservation; and effecting wider participation by appropriate community representatives in resolving conflicts related to cultural conservation" (AFC/DOI 1983:76).

Congress has not yet taken up the Cultural Conservation report's recommendations, but it is the Council's conclusion that progress can be made toward meeting the intent of the recommendations, and the policy articulated in the American Indian Religious Freedom Act, by ensuring that Section 106 review is sensitive to traditional cultural values. Accordingly, on July 16, 1984, the Council authorized preparation of these Guidelines, and on _____ approved them for publication.

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Definitions

Cultural value means the contribution made by an historic property to an ongoing society or cultural system. A traditional cultural value is a cultural value that has historical depth; a non-traditional cultural value is a cultural value that lacks such depth. In a sense, any historic property has cultural value; by inspiring or informing us about the past, by illustrating a form of architecture, or by serving a modern purpose through adaptive reuse, it contributes to our ongoing cultural life. The focus of attention in these Guidelines, however, is on those properties, normally though not necessarily non-architectural, whose primary value springs from the role they play in maintaining the cultural integrity of a particular social group, usually a relatively small segment of the total national society, usually though not necessarily localized, often though not necessarily of ethnic minority heritage.

Federal agency, for purposes of these guidelines, means any agency of the United States Government, any representative of such an agency, and any local government, recipient of Federal assistance, Federal permittee or licensee, or other party acting on behalf of or carrying out functions delegated to it by a Federal agency in connection with Section 106 review.

SHPO means the State Historic Preservation Officer designated by the Governor of a State pursuant to Section 101(b)(1)(A) of the National Historic Preservation Act.

Policy

It is the policy of the Advisory Council on Historic Preservation to seek full consideration of traditional cultural values in the review of Federal projects under Section 106 of the National Historic Preservation Act.

Guidelines

In carrying out the policy set forth above, the Council will encourage Federal agencies to use the following guidelines.

Introduction

Section 106 of the National Historic Preservation Act requires that:

"The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the Head of any Federal department or independent agency having authority to license any undertaking shall prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register (of Historic Places). The head of any such Federal agency shall afford the Advisory Council on Historic Preservation...a reasonable opportunity to comment with regard to such undertaking."

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Federal agencies comply with Section 106 by following the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) or by following agency-developed counterpart regulations approved by the Council. Local governments carrying out environmental review responsibilities delegated to them by the Department of Housing and Urban Development in accordance with statute comply with special Council regulations tailored to their needs (36 CFR Part 801).

The Purpose of Section 106

Section 106 was included in the National Historic Preservation Act to ensure that the values ascribed to historic properties by the public are not ignored by Federal agencies and those they assist or license when they plan projects that may affect such properties. Accordingly, the Council's regulations establish a process in which historic properties are identified during project planning, and in which agreement is sought through negotiation among concerned parties on ways to minimize adverse project effects on such properties.

The National Historic Preservation Act does not encourage the preservation of historic properties simply because "they are there," but in order that they can remain and become "living part(s) of our community life and development in order to give a sense of orientation to the American people" (NHPA Sec. 1(b)(2)), and in order for them to "fulfill the social, economic, and other requirements of present and future generations" (NHPA Sec. 2(1)). As a result, the process set forth in the Council's regulations is designed to identify what is valued about the historic qualities of each historic property subject to effect, and to seek ways to preserve or even enhance such qualities in the context of development. Where preservation and enhancement are not feasible, the process seeks to establish agreement among concerned parties on ways to minimize the damage done by development to those qualities that people value in the historic properties affected.

Actions undertaken, assisted, or permitted by Federal agencies can have profound impacts on places of traditional cultural value. Even where no direct demolition or other disturbance of such a location occurs, indirect effects of a project on traditional uses of the location, and on the fabric of traditional life in whose context the location has meaning, can be widespread. Where review of a project under Section 106 fails to consider these effects, it may miss the most serious impacts of the project on the values most meaningful to the most affected segments of the public.

Kinds of Historic Value

It is obviously necessary that the mechanisms agreed to for the reduction or mitigation of adverse effects be appropriate to the public values represented in the historic properties involved. A variety of values may be present in historic properties, including:

- * Architectural value: the importance of a property as an example of an architectural type or period, the work of a particular architect or group, or the application of particular concepts, methods, or technology.

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- * **Associative value:** the importance of a property as a reminder of an event, a person, a process or trend affecting the history of the world, the nation, or a region, community or group.
- * **Use value:** the potential of an historic property for continued productive use as a part of modern society.
- * **Information value:** the potential of an historic property to provide information, through recordation or archeological research, that is useful to the study of important aspects of the past.
- * **Cultural value:** the contribution made by an historic property to an ongoing society or cultural system. It is this sort of value that is the focus of these guidelines.

A given property may of course embody more than one of the above values.

The values that may be present in an historic property are not always fully recognized or documented when a property is nominated to or determined eligible for the National Register of Historic Places. The National Register Criteria (36 CFR Sec. 60.6) establish a threshold over which a property must pass in order to be recognized as historic by the Federal government, but they do not necessarily describe all the public values that may be embodied in a property that crosses the threshold, and that must be taken into account when considering the effects of an action on such a property. As a result, the fact that a given value may not be ascribed to a property in the documentation used in placing the property on the National Register or determining it eligible for the Register should not be taken to mean that the property may not have such a value.

The Cultural Value of Historic Properties

In a general sense, all historic properties have cultural value, since history is itself a cultural phenomenon. As used here, however, cultural value applies to the role played by a property in an ongoing, contemporary cultural system. A cultural system, in turn, is a group of people linked together by shared values, beliefs, and historical associations, together with such a group's social institutions and the physical objects necessary to the operation of the institutions.

As an example of a cultural system, consider the well-known Amish communities of central Pennsylvania and other parts of the eastern United States. The Amish constitute a group united by particular religious views and beliefs about the proper organization of society, education, and the use of technology. These beliefs structure their lives and create the distinctive cultural landscapes in which they live, featuring large, clean farms without powered facilities, special patterns of land use and architecture, and such artifacts as horse-drawn buggies, particular clothing styles, and so on. An Amish community, while interesting to outsiders, is of fundamental value to its Amish residents as the physical embodiment of their society. Changing the cultural landscape of the community, for example by building a new highway through it, is likely to change the society itself, and will likely be of special concern to the community's residents and to Amish in general.

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Cultural value and Section 106

The purpose of these guidelines is to assist in the consideration of cultural values in connection with the review of actions under Section 106. In order to be considered in the "Section 106 process" a cultural value must be related to a property or properties included in or eligible for inclusion in the National Register of Historic Places. Thus a cultural value without a property referent cannot be considered under Section 106. For example, a traditional dance form could not be the subject of review under Section 106 unless there were an historic property involved; perhaps the location of the dance's origin or the location where it is traditionally performed. Similarly, the cultural values of an Amish community could not be the subject of Section 106 review unless the community's buildings or cultural landscape were eligible for inclusion in the National Register.

In order to be considered under Section 106, an historic property must be subject to some kind of effect by a Federal, federally assisted, or federally licensed undertaking. In the example of the Amish community referred to above, assuming that the community was recognized as eligible for the National Register, it might be subject to Section 106 review if a highway were proposed through or near it. The highway would alter the cultural landscape of the community, and it might have further effects by introducing traffic patterns incompatible with the community's traditional modes of transportation and interaction, or by stimulating incompatible urban or suburban growth. Less obvious effects subject to review under Section 106 might arise from implementation of a Federal program providing assistance to certain kinds of farming, or regulating land use, such that it would become more difficult for the Amish community to maintain its traditional way of life and hence its valued cultural landscape.

It is important to recall that Section 106 does not require the preservation of historic properties or the values they represent, but only their consideration in planning. Thus the recognition of a cultural value in a property does not give the group to which the property is valuable a veto over its incompatible use.

Assume, for example, that hunting caribou in a particular range of mountains is of definitive cultural importance to a group of Eskimo communities, and that the range is on or eligible for the National Register and is proposed for designation as a caribou sanctuary. Section 106 would give the Eskimo communities no basis for halting the designation, provided the Council's regulations had been complied with. Consultation under the regulations would, however, provide opportunities for the communities to express their concerns, with the expectation that they would be addressed and, if possible, resolved.

Traditional and Non - Traditional Values

A traditional cultural value is one that has historical depth; a value that has not historically been ascribed to a property is non-traditional. For example, a mountain viewed by an Indian tribe in antiquity as sacred, and viewed by elements of the tribe as sacred today, has traditional cultural value, but a mountain viewed as sacred by a recently established utopian

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religious community does not have traditional cultural value. Traditional cultural value is a legitimate specific concern under the National Historic Preservation Act; non-traditional cultural value is not. Although a non-traditional cultural value should be considered by an agency in making a public-interest decision, it is not the purpose of the National Historic Preservation Act to ensure that this is done.

A property need not have been in consistent use since antiquity by a cultural system in order to have traditional cultural value. The sacred mountain alluded to above, for example, might have gone out of use when the Indian group to which it is important was placed on a reservation and converted to Christianity, but have come back into use as part of a contemporary revitalization movement in the tribe; the value ascribed to it would be a traditional one. If the tribe no longer ascribed cultural value to the mountain, it might still have associational or information values sufficient to make it eligible for the National Register, but no cultural values would need to be considered under Section 106. If the tribe had simply picked a mountain to regard as sacred in connection with its revitalization, without connecting its modern use with a similar use in antiquity, the cultural value would not be traditional.

The level of cultural value ascribed to a property may change through time, however, without causing the property to lose value altogether. For example, assume that a given cultural group traditionally carried out ceremonies at four locations, two of which were much more important than the other two. Assume further that modern development has essentially destroyed the two most important locations, or at least made it impossible to carry on ceremonies there. Assume, then, that the group seeks to reestablish its ceremonies using the remaining two locations. The two locations now in use, while not particularly important in the past, now assume great cultural value because they are the only locations left on which the ceremony can be performed.

Religious Considerations

Religion is a fundamental, often central, feature of many cultural systems; as a result, a consideration of cultural values often involves dealing with religious issues.

Federal agencies are often understandably reluctant to take religious considerations into account in their decisionmaking, recognizing the risk of transgressing the Constitutional prohibition on the establishment of religion. For the same reason, the National Register as a rule will not list properties having solely religious value (36 CFR § 60.6()).

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Religious issues with respect to historic properties have arisen most often with reference to Native American⁽¹⁾ religions, particularly since enactment of the American Indian Religious Freedom Act in 1978 (Pub. L. 95-341; 92 Stat. 469; 42 U.S.C. § 1966). The U.S. Commission on Civil Rights (CCR) has provided thorough discussion of the background issues involved (1983). The burden of the CCR's discussion is that ignorance of Native American religious concerns leads to government policies that are discriminatory and that inhibit the free exercise of religion in violation of the Constitution. The CCR specifically discusses a number of Federal construction and land use projects subject to Section 106 review as examples of conflicts between protection of Native American religion and other, competing public interests. It criticizes the Government for failing to strike a balance between such competing interests, and suggests that:

"...decisionmakers and legislators at various levels of both Federal and State governments must become aware of the basic tenets of Native American religion in order to recognize the potential discriminatory effect of their rules or regulations on the religious freedom of American Indians" (p. 30).

A similar conclusion was reached in 1979 by the Department of the Interior Task Force which recommended:

"(that) existing regulations, policies and practices (be revised) to provide for separate consideration of any Native American religious concerns prior to making any decision regarding the use of Federal lands and resources" (DOI 1979:62-3).

Three fundamental points must be recognized about American Indian (and to varying degrees, other Native American) religions in order to accommodate them in Section 106 review.

First, Native American societies tend not to segregate religion from other aspects of society. What Euro-American society separates out as explicitly "religious" is typically integrated into other aspects of Native American culture in such a way as to make virtually every cultural institution "religious" to some degree, and conversely to make "religion" virtually indistinguishable as a concept. Hunting may be a religious act, involving the supplication of animal spirits. House building may have a religious component, featuring the orientation of building components in sacred directions and the inclusion of religious architectural features. The gathering of plants may be of religious importance because of roles they play in traditional medicine or the conduct of rituals. The very organization of traditional Native American society typically involves the application of supernatural models.

(1) "Native American" is commonly used to refer to those cultural groups native to the United States, including American Indians, Native Hawaiians, Eskimos, and Aleuts. It is sometimes taken to apply by implication to the native people of members of the American commonwealth and to those of U.S. possessions and territories.

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Second, Native American religions, at least as practiced in recent times (2) tend not to involve the use of major physical constructions; (2) places of worship and veneration instead are in effect cultural landscapes: mountains, lakes, rocks, trees, and other natural features. As the CCR has commented:

"Rivers, mountains, deserts, fields, stones, and running water, as well as plants and animals, are endowed with protective power in Native American religious belief" (CCR 1983:30) and

"Religious sites such as churches, mosques, the Vatican, and the Western (Wailing) Wall hold religious significance for Jews, Christians, and Moslems. Because non-Indians are more familiar with these structures, it is easier for them to understand the effect of a law that would forbid access to them or that would allow tourists to come in at any time during high mass, for example, and take photographs of the ceremony. However, it is more difficult for non-Indians to understand the burden on Native American religions of such laws governing access to Federal lands, for example, even though some lands, rivers, or mountains may hold as much religious significance for an American Indian as the church does for the Christian" (CCR 1983:30).

Third, practitioners of Native American religions may be unwilling to reveal much about their practices, or may do so only in indirect ways. There are several reasons for this, including the following:

- (1) Often religious knowledge is explicitly regarded as secret, to be shared only in prescribed ways with individuals having particular relationships to the practitioner (eg. specific members of his or her kin group). It is not uncommon for a holder of traditional lore to believe that he or she will die if the lore is shared with inappropriate parties.
- (2) Even if knowledge is not generally secret, it is often construed to be no one's business outside the native community.
- (3) Religious knowledge may be construed by a community to be the exclusive province of a particular practitioner, and others, though knowledgeable, may be hesitant to reveal what they know if the recognized authority has not spoken.
- (4) Practitioners are often not fluent speakers of English.
- (5) Some practitioners may fear ridicule from members of their community who have become acculturated to Euroamerican society.

(2) Some ancient American Indian religions apparently involved the construction and use of substantial temples, for example during the Mississippian period (ca. 900-1300 AD) in the Mississippi Valley.

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- (6) Some practitioners may fear reprisals from the Government if they reveal their practices. It should be recalled that until 1937, the official policy of the U.S. Government was one of active discrimination against American Indian religions (cf. CCR 1983:28-29). This policy, and the fears it engendered, have not been eliminated overnight.
- (7) At the least, there is often a feeling in Native American communities that any effort to seek accommodation between their traditional cultural values and those of the Government is futile and will likely be misused by the Government.

The American Indian Religious Freedom Act (42 U.S.C. §1996) establishes that:

"It shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects and the freedom of worship through ceremonials and traditional rites" (42 U.S.C. §1996 [Supp. IV 1980]).

The Act gives Federal agencies the responsibilities to evaluate their policies and procedures with the aim of protecting Indian religious freedom, to consult with Indian groups, specifically including traditional leaders, in the course of this review, and to make such changes in policy and procedure as are necessary to preserve Indian religious cultural rights and practices.

The Council believes that its regulations provide adequate mechanisms for considering American Indian religious values as they pertain to historic properties and Federal undertakings, provided both the Council and the Federal program agencies, in the course of Section 106 review, give special attention to identifying and dealing sympathetically with Native American religious concerns. Consultation with traditional American Indian leaders and others with religious concerns about historic properties should be a fundamental part of such review.

Fairness suggests that a similar policy should be applied to non-Indian religious interests to the extent that such a policy does not conflict with the establishment clause of the Constitution. In other words, religion should be recognized as an important part of culture, that can result in the ascription of value to properties that should be considered in Section 106 review. Those who ascribe such value to a property should be consulted during the 106 review process to ascertain their concerns and determine whether they can be addressed. While the prohibitions embedded in the Constitution must be scrupulously observed, it should not be assumed that taking a religious cultural value into account in planning automatically violates the establishment clause.

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Non - Religious Cultural Values

Although among Native American Communities it may be difficult to identify traditional cultural values that are not in some way religious, it should not be assumed that religious values are the only cultural concerns that should be taken into account in Section 106 review, or that Native American communities are the only ones who invest historic properties with traditional cultural value. Examples of more or less non-religious traditional cultural values include the following:

- * An ethnic or other social group that has long been resident in an historic district may ascribe traditional cultural value to the District as its traditional home and the embodiment of its traditional organization.
- * A community may ascribe cultural value to the landscape in which it exists, as in the case of the Amish community discussed above, as a physical manifestation of its values and social organization.
- * A community that has traditionally carried out an economic activity using an historic property, for example stockraising or agriculture in a significant cultural landscape, or boat building using an historic construction facility, may ascribe traditional cultural value to the historic property not only as the basis of its livelihood but as a major factor in shaping its lifeways.
- * A community or other group may ascribe traditional cultural value to a property that plays and has traditionally played an important role in the group's social cohesion and interaction, for example a meeting hall, a general school, or a church.
- * A group may ascribe traditional cultural value to a property that is symbolic of the group's identity or history, for example a battlefield or massacre site, an Indian boarding school, a monument or a community center.

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Considering Cultural Values in Section 106 Review

I. Organization

Federal agencies should examine the organizational contexts in which they define and seek to reduce impacts on historic properties and sociocultural values during planning of their projects, to ensure that effective coordination occurs between historic preservation and sociocultural impact assessment. Traditional cultural values are of concern both from the standpoint of historic preservation and from that of an agency's general consideration of the social impacts of its undertakings. Although the requirements of Section 106 are independent of those placed upon Federal agencies by the National Environmental Policy Act and other authorities that require agencies to consider the social impacts of their actions, effective coordination between historic preservation and social impact assessment activities can maximize the efficiency with which traditional cultural values are dealt. Many of the methods used in social impact assessment are applicable to the identification and consideration of traditional cultural values in historic properties, and vice-versa, and professionals involved in social impact assessment and historic preservation often have overlapping or complementary skills and training. Federal agencies should ensure that they have access to appropriate professional expertise in such fields as cultural anthropology, sociology, and folklore to assess impacts on traditional cultural values.

II. Identification of Traditional Cultural Values.

During efforts to identify historic properties subject to effect by their activities, Federal agencies should seek to identify properties that have traditional cultural value, and to define carefully the traditional cultural values that are ascribed to such properties.

- A. Communities, groups, and knowledgeable individuals who may ascribe, or be expert in the ascription of, traditional cultural value to properties in the area should be consulted.
- B. Expertise in traditional cultural values may not be found among contemporary community leaders. As a result, it is necessary to consult with traditional leaders and other knowledgeable parties, not simply to rely upon the community's contemporary political system to provide data on valued historic properties.
- C. Since knowledge of traditional cultural values may not be readily shared with outsiders, knowledgeable parties should be consulted in cultural contexts that are familiar and reasonable to them. This may require the use of languages other than English, the conduct of community meetings ways consistent with local traditional practice, and the conduct of ethnographic and ethnohistorical studies.

III. Evaluation of Properties

In applying the National Register criteria for evaluation (36 CFR § 60.6) to determine the eligibility of properties for the National Register, Federal agencies should interpret the criteria with sensitivity to traditional cultural values. Properties having traditional cultural values are typically eligible for the National Register under 36 CFR § 60.6(a) because they are associated with people or events (including beings and events described in Native American traditions) important in a group's history and culture. Such properties may, of course, be eligible under other criteria as well. Properties that are solely of non-traditional cultural value are usually not eligible for the National Register.

IV. Considering Effects

In considering the effects of a Federal agency action on historic properties, the responsible agency and SHPO should consider any effects the action may have on the traditional cultural values ascribed to such properties.

- A. Effects should be identified and considered in consultation with the communities and other groups that ascribe traditional cultural value to historic properties.
- B. Consultation should be undertaken in a manner that is understandable to the group being consulted, and consistent with their cultural practices and modes of expression and interaction.
- C. Mediation should be employed where necessary to clarify issues and seek consensus on effects and alternatives.

V. Evaluating Alternatives and Establishing Treatment Measures

In evaluating alternatives to avoid or reduce adverse effects on historic properties, Federal agencies, SHPOs, and the Council should take cultural concerns systematically into account, in consultation with concerned groups. Groups ascribing traditional cultural value to historic properties should be afforded the opportunity to participate in the evaluation of alternatives, in a manner that is consistent with their cultural practices and modes of expression and interaction. Measures to avoid or mitigate project effects on properties with traditional cultural value, and decisions to accept such effects in the public interest, should be reached in consultation with the group or groups that ascribe traditional cultural value to the properties.

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Agreement should be sought on alternatives to avoid or reduce adverse effects on the traditional cultural value of historic properties as perceived by concerned groups. It should be recognized that, particularly where a property is of highly charged emotional value to a traditional community, the community may have difficulty considering any alternative other than to eliminate the potentially damaging action altogether. Care should be taken to ascertain and discuss the relative effects of different alternatives in sufficient detail to ensure that they are fully understood, and to balance the deleterious effects of each alternative against its benefits. In weighing impacts against benefits, it should be recognized that often the benefits of a project flow to one group of people while the impacts are felt by another; often traditional communities do not feel that they benefit from development projects, and believe that they suffer the impacts of such projects disproportionately.

In evaluating alternatives and developing treatment measures, it is important to address with precision the kinds of values being affected. For example, if a traditional community values a location because of the medicinal plants that grow there, an alternative that proposes archeological excavation of the location will be irrelevant to the cultural concerns involved, but an alternative featuring avoidance of the location, or perhaps relocation of plants, may be acceptable. Similarly, if the cultural value of a mountain peak lies in its use for ceremonies conducted in the summer months, the alternative of logging in the area using helicopters during the summer may be inappropriate, but logging using ground vehicles during the winter may be acceptable.

VII. General Considerations

A. Consultation with concerned groups should respect the social and cultural context in which each such group operates. The location, organization, and structure of consultation meetings should be designed in a way that is sensible and meaningful to the concerned groups. Where communities and groups are involved whose cultural traditions are different from those upon which Euroamerican law and social organization are based, it should not be assumed that public hearings and similar formal devices will be sufficient to reveal the concerns of such groups.

For example, in many traditional communities knowledge of the past is regarded as conferring special power upon the knowledgeable party, and it is socially inappropriate if not dangerous to expose such knowledge in public. It is also widely regarded as inappropriate for younger people to reveal such knowledge, if they possess it, in the presence of their elders. Elders may not be fluent English speakers, or may be otherwise constrained from speaking out in public. The result is that a public hearing can be conducted on a project having profound impacts on a property of cultural value to a community, without any information on the value involved being volunteered. Only by consulting knowledgeable people in their own cultural context can such information be elicited.

B. Identification of cultural values and consultation with concerned groups should be coordinated with environmental studies under 40 CFR Part 1500 et seq. Special attention should be given to coordination with the public participation required by 40 CFR § 1501.2(c)(2), § 1501.7, § 1502.19, and § 1506.6. Where traditional communities are involved, public participation efforts should be structured in culturally meaningful ways, in order to maximize knowledgeable participation.

C. It must be recognized that, in a given community or social group, some people and subgroups will assign greater traditional cultural value to historic properties than will others, and that often those who assign least value to such properties will be those who, because of their sympathetic relationships with the larger, non-traditional society with which the community or group must deal, are recognized by the larger society as the group's "official" spokespersons. As a result, the fact that the official spokespersons for a given group or community do not raise issues concerning the traditional cultural value of properties during consultation with a Federal agency cannot necessarily be taken to mean that such values do not exist, or that they are not important to significant segments of the community or group. A Federal agency should make a responsible, good-faith effort to identify and consult with traditional cultural leaders and others in a community who may ascribe traditional cultural value to properties, rather than relying solely upon the views of a community's or group's official spokespersons.

D. Where issues concerning a group's perceived economic use of an historic property or its environment are concerned, economic use should not be construed in narrow terms, but should recognize the extra-monetary social values that economic activities may have in maintaining a social system. For example, the fish caught by a community in a stream where a Federal dam is proposed may have minimal value as protein inputs or items of exchange in the community, but be important components in the community's ceremonial system.

E. The traditional religious values that may be ascribed to historic properties by Native American communities and other groups should be recognized as legitimate traditional cultural values, to be considered fully and sympathetically in planning.

F. Where treatment of human remains is an issue, balance should be sought between the cultural concerns of any genetic or cultural descendants of the deceased and the interests of science, taking into account the special guidelines set forth in Appendix I.

G. To maximize efficiency, consideration of traditional cultural values under Section 106 should be carefully integrated with any programs of social impact analysis carried out by the agency, and should generally involve the same professional staff or consultants. Appendix II discusses professional participation in consideration of traditional cultural values, and offers suggestions about obtaining necessary expertise where such expertise is not available within the agency.

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APPENDIX ITREATMENT OF HUMAN REMAINSIntroduction

Archeological sites that become the subjects of consultation under Section 106 often contain graves. When such sites are subjected to archeological excavation, the human remains contained in such graves may become the objects of dispute between the genetic or cultural descendants of the deceased and the physical anthropologists and others who may wish to retain the remains for study. To some extent, such disputes may be inevitable, reflecting fundamental philosophical differences between the disputants. Disputes can be minimized, however, through early, good-faith consultation among concerned parties. The purpose of this appendix is to discuss some of the issues surrounding treatment of human remains, and to provide recommendations as to how to avoid conflict over such treatment.

Definitions

For purposes of this appendix:

- (1) "Human remains" means the physical remains of human bodies, together with any artifacts or other materials interred with them.
- (2) "Genetic descendent" means any person known or reliably assumed to have a genetic relationship to a deceased person; for example, contemporary members of the Lakota Tribe can be assumed to be the genetic descendants of deceased Lakota persons whose remains might be found in an archeological site.
- (3) "Cultural descendent" means any person who, although not necessarily a direct lineal descendent of a particular deceased person, is associated with a cultural tradition to which the human remains of the deceased person has significance; for example, members of a national or regional American Indian organization concerned with preservation of human remains or revitalization of Indian religion might be considered the cultural descendants of deceased prehistoric or early historic Indian people.
- (4) "American Indian community" means a localized American Indian group, whether or not officially recognized as an American Indian tribe by the United States Government.
- (5) "Reburial" and "reinterment" both refer to the replacement of disinterred human remains into the ground or otherwise disposing of such remains in a manner likely to approximate the wishes of the deceased (eg. placement in burial caves or surface mortuary structures where these were used traditionally in the area).

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Principles

- (1) Human remains should be treated with respect for the wishes of the deceased individuals they represent. Presumably few if any people who died during prehistoric times and the early history of the United States hoped to have their bodies exhumed and subjected to scientific study at a later date. It follows that human remains should be left undisturbed unless there is an urgent reason for their disinterment.
- (2) Instances in which it may be necessary to disinter human remains include those in which important public works projects cannot go forward without removal of the remains and those in which such remains are threatened by erosion, vandalism, uncontrolled land development, or other factors.
- (3) Human remains often have deep emotional significance for those who view themselves as the genetic and/or cultural descendants of the deceased represented by the remains.
- (4) Human remains are often the objects of religious veneration by the genetic and/or cultural descendants of the deceased; hence actions that adversely affect such remains, or adversely affect the ability of their descendants to practice their religion, may infringe upon the constitutionally protected free exercise of religion, and must be planned with great care.
- (5) Human remains often have substantial scientific value, with the potential to contribute to research in archeology, physical, social and cultural anthropology, genetics, and medicine. The answers to research questions in such fields can help prolong life, improve the quality of life, and enrich our understanding of human history and society. Human remains that must be disinterred can provide unusual opportunities to address such questions. Addressing such questions may require that human remains be subjected to substantial and extended study, and in some cases that they be destroyed in order to perform laboratory tests.
- (6) Proper treatment of human remains requires that respect for the wishes of the deceased, and for the feelings of the deceased's genetic and cultural descendants, be balanced responsibly against the interests of science.

Issues

- (1) Since it is impossible to predict with certainty the kinds of scientific research questions that may develop in the future, or the kinds of methods and techniques that may become available to help address them through the study of human remains, there is a strong tendency on the part of the scientific research community to seek to maintain human remains in laboratory settings in perpetuity.
- (2) Since human remains represent the ancestors of their genetic and cultural descendants, whose remains are ordinarily accorded considerable respect, such descendants often object to the maintenance of such remains in laboratories for long periods of time, and sometimes to their scientific study. Such objections are particularly acute where genetic or cultural descendants tend not to perceive scientific study of the past as useful or appropriate.

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(3) Some conflict is virtually inevitable between the interests of those concerned about the scientific study of human remains and those with emotional ties to the deceased. At a more theoretical level, some conflict is inevitable between the interests of science and the undoubted desire of most people, at the time of death, to rest in peace.

Management Tools

The major management tools that can be used to arrive at proper treatment of human remains are:

- (a) Consultation: Identifying concerned parties and working with them to identify their interests and achieve balance among them;
- (b) Justification: Assuring that proposed scientific studies requiring that human remains be subjected to protracted or destructive investigation, or not be reinterred, are fully justified as efforts to address important research questions, and
- (c) Funding: Assuring that adequate funds are available for the prompt conduct of justified scientific studies, and for reburial of human remains in a dignified manner consistent with the cultural traditions of the deceased and their genetic or cultural descendants.

Guidelines

- (1) Human remains should not be disinterred unless it is necessary to do so. Generally speaking, such a necessity exists only when the remains are in danger of destruction as the result of land disturbance, inundation, erosion, vandalism, or similar phenomena.
- (2) Where human remains are in danger, they should be disinterred carefully and respectfully, and as completely as possible, using the best available archeological methods. Although the needs of archeological research may not demand the exhumation of endangered human remains, or may require exhumation of only a sample of such remains, respect for the dead demands that to the extent possible, all such remains be recovered before the historic properties in which they lie are destroyed.
- (3) Disinterred human remains should be reburied in safe locations, in a manner as consistent as possible with the likely wishes of the deceased. Locations and procedures for reburial should be developed through consultation with genetic and cultural descendants of the deceased. Where an American Indian community is involved, consultation should be carried out in a manner consistent with the cultural expectations and practices of the community, and should be responsive to the desires of traditional spiritual leaders.
- (4) Before reburial occurs, human remains should be subjected to only such scientific study as is necessary to satisfy justified research interests. Federal agencies responsible for treatment of human remains should be careful to ensure that proposed studies are fully justified: that is, that their likely results will contribute significantly to the resolution of scientific, humanistic, medical, or other questions whose resolution is of clear potential value to society.

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(5) A definite, reasonable schedule should be established and adhered to for study and reinterment. Ideally this schedule should be part of the research design or study plan developed to guide the project in which it is expected that human remains will be found.

(6) Many permutations on the above rules of thumb may be appropriate in particular circumstances. For example:

(a) A wide range of justifiable historical, anthropological, and medical research questions may justify the conduct of basic examinations, similar to autopsies, on all disinterred human remains, to document the age, sex, and general physical condition of the deceased. Where close genetic and cultural descendents of the deceased feel strongly that such studies should not be conducted, however, if there is no pressing need to conduct such studies to answer important research questions, it may be appropriate to reinter human remains without any study at all, or with very attenuated study.

(b) Conversely, there may be instances in which it is so clearly in the public interest to conduct extensive study of a given set of human remains, to address clearly justified research questions, and to maintain such remains for future study, that the interests of science may override those of respect for the wishes of the dead and their descendents, and the remains should not be reinterred at all.

(c) In some cases it may be possible to arrange compromises between respect for the dead and their descendents and the interests of long-term research, for example by reintering human remains in such a way that they can be disinterred again if future research needs so demand and descendents approve.

(d) Where questions arise about whether and how to reinter human remains, the desires of close genetic or cultural descendents should usually be accorded greater respect than those of more distant descendents, and those claiming both genetic and cultural descent should be respected over those claiming only cultural affiliation. For example, if the direct genetic descendents of a prehistoric American Indian community ask that the remains of the community's inhabitants be cremated, while a nationwide American Indian organization, claiming pan-Indian cultural affiliation with the deceased, requests that they be reinterred unburned, the wishes of the genetic descendents should be given precedence.

(7) The precise arrangements for study and reinterment of human remains should be worked out through consultation between project sponsors, American Indian communities or other genetic and/or cultural descendents, and anthropologists or others having research interests in human remains. In some instances, such arrangements can be worked out on a regional basis, or with respect to all human remains found in the ancestral territory of, or representing the ancestors of, a given contemporary cultural group. In other instances consultation will be needed on a case-by-case basis.

(6) Where human remains are reinterred, the Federal agency or other party responsible for their reinterment should:

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(a) ensure that the reinterred remains are reasonably secure against further disturbance;

(b) minimize the disturbance of intact archeological deposits during reinterment, and

(c) if the remains are reinterred in proximity to an archeological site, provide for the reinterred remains to be marked in some way to distinguish them from original, in-place constituents of the archeological site.

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APPENDIX II SOURCES OF PROFESSIONAL EXPERTISE

Studies to determine the location and value of properties having traditional cultural value, and efforts to mediate between parties having divergent interests in such properties, are best carried out by persons having substantial professional training and experience in cross-cultural research and consultation. The disciplines of sociocultural anthropology and sociology are most often those in which such training and experience are provided.

It is often important that those who carry out the necessary studies or mediation activities are fluent in the non-English language or languages spoken by those who ascribe traditional cultural value to the properties in question. Even where language itself is not an issue, practitioners should be aware of cultural norms held by the group involved, to avoid inadvertent transgressions. This typically requires significant background knowledge of the group, gained through experience or prior study.

xxclified sociocultural anthropologists and sociologists are becoming increasingly available to agencies as the field of "Social Impact Assessment" grows as a part of general environmental impact evaluation. An increasing number of consulting firms maintain such expertise on staff, as do an increasing number of local, state, and Federal agencies and regulated industries. Most practicing sociocultural anthropologists and sociologists, however, are on the faculties of academic institutions. Accordingly, an agency setting out to obtain expert assistance in this field is probably best advised to contact the Departments of Anthropology and Sociology at a reasonably large university near the project location for advice.

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